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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,847	12/09/1999	TOAN TRINH	7114	8139

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EXAMINER

MOORE, MARGARET G

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/457,847

Applicant(s)

TRINH ET AL.

Examiner

Margaret G. Moore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 14, 15, 33 to 42, 45, 46, 48 to 50, 56, 60 to 66 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 15, 33 to 42, 45, 46, 48 to 50, 56, 60 to 66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/11/05 has been entered.

2. In an effort to overcome the previous rejection, applicants have inserted a pH limitation to the instant claims. As such the following new grounds of rejection are made.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 14, 15, 33 to 42, 45, 46, 49, 50, 56 and 60 to 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al. in view of Jellinek.

The Examiner realizes that the action dated 9/14/04 indicated that Vogel et al. fail to teach or suggest this pH range. However, upon reconsideration the Examiner believes an obviousness rejection, in view of the teachings of Jellinek, is appropriate.

Initially, the Examiner would like to note that the claimed pH range is actually quite broad. That is, the term "about" provides latitude for the range claimed and thus "about 9" includes values lower than 9 and "about 10.5" includes values higher than 10.5, such that this range could reasonably include pH values of from 8 to 11.5. A neutral pH, as applicants are aware, is 7. Thus this range embraces pH values just above what would be considered neutral.

The teachings of Vogel et al. have been detailed in previous office actions and as such this will not be repeated. Patentees fail to specifically teach a pH value for the composition therein.

Jellinek teaches compositions for treating textile materials. The bottom of col. 9 teaches that the pH range should be within a range of 3 to 11, preferably 4 to 10, because higher or lower pH values, or "extreme conditions" can degrade the textile material. From this, one having ordinary skill in the art would recognize that a pH value of greater than 11 should be avoided in all textile treating compositions since such a value would be considered extreme and have the potential to degrade the textile.

The composition in Vogel et al. preferably includes an antistatic agent, as taught on the bottom of column 10 through column 11. Many of these agents are amine based and as such would be basic. The composition also contains a silicone which can be an amine substituted silicone, as seen on column 3. Such a component will also be basic. The working example H on column 16 contains amino silicones and an amine functional copolymer. Such a composition will inherently be basic.

Thus, while Vogel et al. do not specifically teach the pH of the composition, it is clear from the teachings of Vogel et al. that the compositions therein can be basic since many of the components therein are basic. Such compositions will have a pH value of greater than 7. While the skilled artisan would have been motivated by the teachings in Vogel et al. to prepare a textile treating composition that will inherently be basic, one also realizes from the teachings in Jellinek that the pH should not be above 11 and preferably not above 10, in an effort to avoid extreme conditions. It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art (i.e. does not require undue experimentation). In view of the fact that the compositions in Vogel et al. can be basic, combined with the teachings of Jellinek of a preferred pH limit for basic compositions, the skilled artisan would have found the instantly claimed range to have been obvious.

On the other hand, note that a prima facie case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties. Thus even if the composition of Vogel has a pH value slightly lower than the claimed range, which as noted above embraces values as low as 8, the difference would not have been an

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unobvious one since the skilled artisan would have expected the composition to have the same properties, i.e. the fabric treating properties of both Vogel et al. and the instant claims.

For reasons of record, claims drawn to an article of manufacture including a set of instructions fail to lend any unobvious limitations compared to claims drawn to an article per se. See for instance the rationale noted in paragraph 9, 9/25/02, and paragraph 3, 5/4/04.

5. Claims 14, 15, 33 to 38, 42, 45, 46, 49, 50, 56, 62 to 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jellinek in view of Vogel et al.

As noted in previous rejections (such as para. 6 of the action dated 9/14/04) Jellinek teaches a treatment composition that meets the claimed pH range. See for instance composition G on column 20. Column 9, line 48, teaches that this composition can be applied to a textile by spraying. Patentees fail to specifically teach the Sauter mean diameter of the composition when sprayed.

Vogel et al. teach a textile treating composition that can be sprayed. The teachings on column 13 indicate a preferred particle size of the composition when sprayed of less than about 200 microns. In addition, many of the specific spray dispensers taught by Vogel et al. are the same as those which applicants admit result in the claimed particle diameter spray range (compare pages 64 to 66 of the instant specification to the spray devices taught on columns 13 and 14).

Thus one having ordinary skill in the art, desiring to apply the composition of Jellinek by spraying, would have been motivated to look towards analogous art references to determine operable spray devices. Vogel et al. teach that devices that result in a particle diameter are known in the art and the skilled artisan would have been motivated to select such a spray device, inherently resulting in a particle diameter within the claimed range. In this manner the instant claims are rendered obvious.

6. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel in view of Jellinek or Jellinek in view of Vogel, as noted supra, and further in view of Davis.

The rationale behind this rejection is consistent with that noted in the office action dated 2/28/05, see paragraph 6. Since this rejection was not specifically traversed, the basis for it is maintained.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 571-272-1090. The examiner can normally be reached on Monday to Wednesday and Friday, 10am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Margaret G. Moore  
Primary Examiner  
Art Unit 1712

mgm  
5/2/05